The Solicitors' Journal

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CURRENT TOPICS

The Wig

IT may be suspected that many women barristers consider the wig not unbecoming. Presumably it is on behalf of those who are not of that number that Lord Justice MACKINNON has taken up the cudgels in the current *Law Quarterly Review*. Robes, he points out, are part of the legal uniform, but wigs are simply a fashion in headdress once universal for all gentlemen, and abandoned towards the end of the eighteenth century by all except bishops, judges and barristers. The bishops later gave them up. The learned Lord Justice is in a godly company in objecting to the wig. Owing to changing fashions in legal costume, a fixed style was chosen in the reign of Charles I. This included a wig, to which certain Puritanical persons took objection, on the ground that it savoured of what might nowadays be called dandyism. A selection was made from about thirty kinds, most of them made of human hair, and heavily scented. Horse-hair was a later substitute. The modern barrister's wig with its curls might be thought to be effeminate if considered apart from its legal associations, and if any committee were to consider the introduction of the more manly biretta for women as a substitute for the wig, they might consider as an alternative proposal the substitution of the biretta for men and the retention of the wig by women. Lord Justice MACKINNON is in favour of the biretta for women, as was the late Mr. Justice DARLING when a meeting of judges in 1922 decided in favour of wigs for women by a majority of nine votes to two. Possibly the author of "On Circuit" is so steeped in the associations of the past as well as the legal associations of the present that he fails to recognise that the curls which adorn the manly visages from which issue weighty legal arguments, are in fact more pretty than dignified. There is, however, another point of view, so well expressed by THOMAS HOOD, referring to a dispute in the Church of England concerning the use in the pulpit of the white surplice or the black gown:

> "For me, I neither know nor care,
> Whether a person ought to wear
> A black dress or a white dress."

New Proposed Tax Reliefs

AN Income Tax Bill, introduced by the Chancellor of the Exchequer, proposes a number of important reliefs to industry and agriculture to come into operation after the war on an appointed day. One of the most important of these is an initial allowance of 20 per cent. of the cost of new plant and machinery and an increase in the annual allowance. This is to be extended to cover second-hand machinery, providing that it is newly installed for industrial purposes. The ordinary wear and tear allowance for plant and machinery is to be increased by one-fourth in place of the existing addition of one-fifth. An annual allowance is proposed in respect of capital expenditure on the purchase of patent rights after the appointed day, on the basis of spreading the expenditure over seventeen years, or the life of the patent, if shorter. A corresponding charge, on the basis of a spread of six years, is to be made on the seller of the patent, and there is provision for the earlier writing off of patents sold or lapsed. The "exceptional depreciation" allowance is to be extended to buildings, plant and machinery not scrapped but retained in the business, if they are worth less than their cost. There is also to be an initial allowance of 10 per cent. of the cost of new industrial buildings and an annual allowance of 2 per cent. to write off the balance of the cost. Such buildings are defined as including premises used for productive industry and transport and for the welfare of their workers, excluding retail shops and offices. The effect of the initial and annual allowances for new industrial buildings is that the cost will be written off over a period of forty-five years. If buildings are scrapped earlier, provision is made for an earlier writing off. There is also to be an allowance, spread forward over ten years, of capital expenditure on agricultural buildings and works, a depreciation allowance for mines and oil wells, and an extension of the allowance for expenditure on scientific research.

London Remand Homes Report

WHATEVER may be said of the general tone of the Report of the Committee of Inquiry on London County Council remand homes, there can be no doubt either of the exhaustive nature of the inquiry or of the promptitude with which the report was issued. There were seventeen meetings of the committee, which heard sixty witnesses and visited four remand homes. The statement of Mr. JOHN WATSON, Chairman of the Tower Bridge juvenile court, out of which the inquiry arose, was made on 14th November, 1944, and the committee's report was published on 14th February, 1945. With regard to the circumstances occasioning Mr. Watson's statement, the treatment of a child of seven years of age in an L.C.C. remand home, the committee found that the statement was inexact and misleading. The child, the report states, was properly received into the remand home and properly cared for while there. No convincing evidence, the committee found, had been given that the present provision of remand homes in London was inadequate. On the other hand, there must have been a certain indifference and lack of enterprise about the administration of the girls' homes to

account for the cumulative discontent of both magistrates and probation officers. The committee emphasised the need for effective day and night supervision to prevent demoralisation of one girl by another, the fullest occupation of the time of the boys and girls in instruction and amusement, a well qualified staff, adequate equipment. They found it shocking that children should be liable to be sent back to detention for another week, to " think things over " or merely because a medical or psychological report could not be obtained in time. The age group, eight-twelve, should be kept apart from other children and young persons for most purposes, but not necessarily in a separate building. Among classes which the committee find should be either removed from a remand home or housed in a separate wing or floor are children under the age of eight, girls suffering from venereal disease (as at present), and children and young persons under punitive detention. The magistrates concerned have noted with satisfaction " the ample justification afforded by the extensive reforms which the committee recommend." On the one matter of the urgency of the segregation of innocent girls from those of a gravely immoral character, on which the committee differed from the magistrates, they also differed from six other magistrates, twelve women probation officers and two eminent psychiatrists. A number of juvenile court magistrates have asked the Home Secretary to have the evidence published. In this free democracy only arguments of the most technical kind can be put forward against this being done.

Inadequate Value Payments

SINCE the recent debate on value payments in the House of Lords it has become clear from further discussion in the Press that there is a general and very natural feeling of discontent concerning the disparity between the 1939 basis of assessing a value payment and the basis of present prices for a cost of works payment. At a meeting of the council of management of the Valuers' Association on 14th February it was unanimously resolved that, in the council's opinion, " the value payments suggested by H.M. Government for property destroyed by or incidental to enemy action are often inadequate and inequitable and that an undertaking should be given that the basis of such compensation will be revised." A communication embodying this resolution has been sent to Sir RICHARD V. N. HOPKINS, G.C.B., Secretary to the Treasury. No undertaking has been given except in so far as the Lord Chancellor's statement in the recent debate can be construed in that way. What he said was that if the Treasury made an order under s. 11 of the War Damage Act, 1943, its operation would be retrospective as to value payments already assessed, but that such an order could not be made until after the war. Under that section the Treasury have power to order the increase of value payments on the advice of the War Damage Commission and subject to approval by a resolution of Parliament. The anomaly and injustice is so great that those injuriously affected should not be required to wait for an administrative order, but are entitled to have the whole matter thoroughly discussed in Parliament at an early date.

Water Bill, 1945

THE object of the Water Bill, 1945, introduced in the House of Commons on 2nd February by the Minister of Health, is to make possible a national water policy designed to secure that " all reasonable needs for water by householders, industry and agriculture can in future be met speedily and without avoidable waste." It embodies the proposals issued by the Government last April in the White Paper on a National Water Policy (Cmd. 6515), and it proposes to impose on the Minister of Health, for the first time, the express statutory duty of promoting throughout England and Wales the provision of adequate water supplies and the conservation of water resources. Policy is to be based on comprehensive information, systematically collected and assessed, regarding water resources and needs. The Government's Central Advisory Water Committee is to be reconstituted as a statutory body and advise not only on matters referred to it by any Government department, but also, on its own initiative, on any question within its ambit. Surveys of bulk needs of large areas are to continue to be carried out where necessary in England and Wales, and the Minister of Health is to have powers to require information and statistics. The general framework of existing local organisation is to be retained, but default and directing powers of the Minister of Health are to be strengthened, and amalgamation of undertakings and joint action to be encouraged and, if necessary, enforced to secure efficiency and economy. Penalties are provided for pollution of water used for human consumption. Statutory undertakers are to be enabled, subject to proper safeguards, to take water from rivers and streams on reasonable conditions, and to acquire land by agreement or compulsorily. Industry and agriculture are to be given the right to demand water on reasonable terms and conditions. The present law is to be altered with the object of requiring a local authority to ensure that mains are brought wherever practicable to a suitable point which will enable a house to be connected at a reasonable cost, and to insist that wherever practicable and reasonable, a piped supply is brought into the house.

Poor Persons

As good a time as any for arousing interest in a subject is when a Government committee is inquiring into it. " In the multitude of counsellors there is safety," and every point of view ought to be given expression. Furthermore, experience has shown that without public interest and, indeed, enthusiasm on the subject, a report may be filed away in a pigeon-hole never again to see the light of day. Mr. CLAUD MULLINS, whose voice on any subject connected with legal administration must always be heard with respect, makes a number of important points on the subject of " The Law and Poor Persons " in the January issue of the *Quarterly Review*. He criticises the phrase " poor persons " on two grounds, first, that it is patronising and, secondly, that only very rich corporations that have to meet heavy excess profit claims are happy litigants to-day. The crux of the matter, as Mr. Mullins abundantly illustrates in his article, is the high cost of all civil litigation in proportion to the amounts which are recovered. As he remarks, whatever the recommendations made by the committee, " the legal situation must remain profoundly unsatisfactory." Mr. Mullins attacks the system of " pleadings which only lawyers can possibly understand and which do not set out the realities of the case," " interlocutory applications in the Bear Garden . . . at much cost " and subject to appeals, solicitors being paid largely for work that need not have been done, and counsel's fees with the clerk's payment and the two-thirds rule. All of these are legitimate subjects of controversy, but not one provides the real reason for the expense of litigation, which is, that the best machine is bound to be the dearest. Mr. Mullins clearly states the usual arguments against making poor persons' litigation a public charge, the difficulty of administering a means test, the injustice to the opponents of poor persons and the difficulty of sifting out " fruitless " litigation. The most extraordinary argument he puts forward is that poor persons want, not litigation, but advice and conciliation The reason, as we understand Mr. Mullins' contention, is that where there is conflicting evidence, no legal trial is possible. Such an argument refutes itself. His argument against a public defender in criminal cases is that advocacy which scores magical triumphs with juries should not be paid for out of public funds. So long as there is a jury system which is held in public respect this is an amazing contention, as is also Mr. Mullins' statement that " any scheme for establishing a public defender will involve a censorship of defences." In suggesting that probation officers frequently disclose the core of a mitigation plea better than barristers or solicitors Mr. Mullins is probably fortified by experience, but may not the answer be that the probation officer is more likely to have " the ear of the court " than an advocate, whose appearances, however frequent, are never so regular as those of the probation officer ?

Counsel as Witness

In a recent Old Bailey trial counsel, appearing for a solicitor who had pleaded guilty to charges of fraudulent conversion, asked for the leave of the judge to go into the witness box and testify as to his personal knowledge of the character of his client. The judge granted leave, and counsel thereupon removed his wig, went into the witness box, and gave his testimony on oath. The practice is not altogether happy, even if it has precedents. There was at least one case in which the practice was not only criticised but held to be wrong. In *Stones* v. *Byron* (1846), 4 D. & L. 393, the under-sheriff of Middlesex had allowed the plaintiff's attorney to testify in an action on a bill of exchange for £10. Patteson, J., said that he did not think that such a course of proceeding was "proper or consistent with the due administration of justice," and granted a new trial. *Deane* v. *Packwood*, 4 D. & L. 395, was a similar case in which a new trial was granted; *Cobbett* v. *Hudson* (1852), 1 E. & B. 11, was a rather different type of case, in which a plaintiff conducted his suit in person, and it was held that he had a right to address the jury as advocate, without waiving his right to give evidence as a witness in his own behalf. The reason for this was that 14 & 15 Vict. c. 99 empowered a plaintiff to give evidence on his behalf, without prejudice to his right to appear as his own advocate. The authorities were examined by Lord Campbell, C.J., who expressed strong disapprobation of the practice of a person being alternately, during the same trial, advocate and witness. He spoke of it as "objectionable," "contrary to good taste and feeling," "revolting to the minds of the jury" and "generally injurious to those who attempt it," and hoped, without making any positive ruling, that such a practice was not likely to spring up. It may well be that an advocate may properly call himself as a witness where there is no issue except that of character, but at the very least the practice is irregular, and (except in the recognised cases where an advocate in previous proceedings is called as a witness by an advocate in subsequent proceedings (*Brown* v. *Foster*, 1 H. & N. 736)) one which should not receive encouragement.

Meaning of "Incurred"

Regulation 50B, para. 8, of the Defence (General) Regulations provides for compensation to be paid under the Compensation (Defence) Act, 1939, "in respect of any expenditure reasonably incurred" in making good damage (otherwise than by providing a substitute) caused in connection with the severance of fixtures, the compensation to accrue due "at the time when the expenditure is incurred." In a case before the General Claims Tribunal, reported in the *Estates Gazette* of 27th January, a claimant asked for £27 10s., being the amount estimated for making good damage which she alleged had been caused to walls, a path and a pillar by the removal of railings on behalf of the Ministry of Works. She stated that she had accepted a builder's estimate for that amount, and the builder had been unable to start on the work on account of the damage done by flying bombs. On behalf of the claimant it was argued that if she broke her contract with the builder he could sue her for damages, and that therefore the expenditure had been incurred within the meaning of the regulation. Lord Patrick, a member of the Tribunal, asked: "When you go to a tailor and order a suit do you incur expenditure or a liability." Counsel's answer was that he incurred a liability, which became expenditure as soon as the tailor obtained judgment against him. The Tribunal decided to adjourn the case, with liberty to apply, and the chairman stated that in the meantime it might be possible for the claimant to have the work done and then bring her claim. On the claimant pointing out that the £10 restriction on building work made it impossible for her to get the work done at present, a member of the Tribunal replied that if she were awarded the money now she would be in the same position in that respect. The decision seems to be unquestionably right. "Incurring," literally, means "running into," and it is difficult to see how it can be argued that one may run into something before reaching it, in this case, expenditure. Even if the money had been paid to the builder in advance, it could not be said to be expenditure "reasonably incurred" at a time when building restrictions are severe and are likely so to remain for some time to come.

Conservative Report on Housing

The Housing Sub-Committee of the Conservative Party which issued its report entitled, "Looking Ahead," on 16th January, 1945, consisted of two chartered surveyors, a master builder, a building and engineering contractor, an architect and a number of other representative housing experts. The ambitious target of 750,000 houses within two years of the end of the war in Europe is one of the chief of its recommendations. The report reveals that there is an immediate shortage of a million houses. The committee strongly recommend "that further consideration should be given to the possibility of making good the greater part of the immediate deficiency with permanent houses, of non-traditional construction if need be, rather than with temporary construction." The committee recommends that the resources of both private enterprise and local authorities be employed to the full in the provision of houses; that private enterprise should receive subsidies on the same terms as local authorities and be subject to the same conditions; and that the activities of housing associations should be extended. After dealing with the emergency period, the committee outline an intermediate programme during which will be undertaken schemes of slum clearance and the relief of overcrowding, which will entail the erection of 250,000 houses; the replacement of temporary housing; and the provision of a surplus of houses to meet the needs of a mobile population. It is recommended that local authorities be empowered to take leases of houses for conversion where owners are unable or unwilling to do the work. The report states that certain controls must stay until the emergencies caused by the war have passed—notably allocation of building labour and materials and price controls. During the opening stages rationing and price control of building materials must, it is stated, continue, and there should be reappointed an inter-departmental committee with added powers to operate the controls.

Common Law Commentary

In this issue we introduce a new feature which we hope will appear regularly. It is complementary to "A Conveyancer's Diary" and "Landlord and Tenant Notebook," and is designed to keep the busy practitioner aware of recent developments in what may generally be classed as common law. This classification may not be rigid and technical, but rather includes the class of work which might pass through the chambers of common law counsel with a wide general practice; avoiding, of course, such topics as are covered elsewhere in this Journal. The author regards it as little more than the notebook which every conscientious practitioner who wishes to keep abreast of the times might keep. The law covered is that reported or enacted in 1945. It is thought that this division will be the most useful. As the first article is only now appearing it has been necessary somewhat to compress the earlier commentary. The Editor and the author will be interested to have the criticisms of readers.

Recent Decision

In a case in the Court of Appeal, on 9th February (*The Times*, 13th February), the Court of Appeal (Scott, du Parcq and Morton, L.JJ.) held that, where a wife had a right at common law to pledge her husband's credit for necessaries, she was not debarred from exercising it by the making of a maintenance order under s. 5 (*c*) of the Summary Jurisdiction (Married Women) Act, 1895. The court added that, in view of the fact that the provision for the wife made by the order of the magistrates was likely to be suitable to the husband's means in accordance with the section, it must not be supposed that credit could safely be given to a wife in whose favour a maintenance order had been made.

TIME FOR SERVICE OF WRIT

In May of last year the Court of Appeal held, in an action for damages in respect of a fatal accident under Lord Campbell's Act, that a judge had power (under Ord. LXIV) to extend time when the writ was not served within the usual twelve months (*Holman* v. *George Elliott & Co., Ltd.* [1944] K.B. 591 ; 88 Sol. J. 289).

Under Ord. VIII, r. 1, as is well known, it is provided that a writ shall not be in force for more than twelve months from the date of issue. But the rule provides further that the court or a judge can renew the writ for a further six months if reasonable efforts have been made to serve the defendant, or if there is some other good reason. Order LXIV, r. 7, gives the court or a judge general power to enlarge or abridge the time appointed by the rules for doing any act or taking any proceedings.

The Court of Appeal's decision was made despite the case of *Doyle* v. *Kaufman* (1877), 3 Q.B.D. 7, where it was laid down that there was a practice not " to extend the time for renewing a writ of summons where the claim would in the absence of such renewal, be barred by the Statute of Limitation," but was decided that there was no rule depriving a judge of his discretion to extend the time in such a case as that under Lord Campbell's Act. In *Holman's* case the writ was issued within twelve months of the date of the accident, as required by s. 3 of Lord Campbell's Act, but was not served within twelve months as demanded by Ord. VIII.

In *Battersby* v. *Anglo-American Oil Co., Ltd.* [1945] 1 K.B. 23 ; 88 Sol. J. 423, the Court of Appeal refused to follow *Holman's* case. Its judgment, read by Lord Goddard, is instructive. It pointed out that until *Holman's* case there was a line of authority for the court not renewing a writ under Ord. LXIV if the effect will be to deprive the defendant of the benefit of a limitation which has already accrued. Thus the wide discretion under Ord. LXIV is curtailed.

If a writ is issued but not served within the prescribed time it becomes a nullity. The court therefore held that the previous issue of the writ was not a " commencement of the action " within s. 3 of Lord Campbell's Act. It regarded *Hewett* v. *Barr* [1891] 1 Q.B. 98, as " really conclusive." In that case Lord Esher, M.R., laid down the general rule that renewals ought not to be granted where they would have the effect of altering the existing rights of the parties.

The concluding paragraph of the judgment in *Battersby's* case is interesting. Even when an application for renewal of a writ is made within twelve months of the date of issue, and the writ is therefore still alive, the power given by Ord. LXIV should be used guardedly. Care should be taken to see that existing rights of defence are not prejudiced, and renewal should only be granted where there is a good excuse for the delay in service. It is not generally a good excuse that the plaintiff desires to hold up the proceedings while some other case is tried, or wishes to await some future development.

This practice with regard to renewals which would conflict with periods laid down in Statutes of Limitation was never rigidly followed where the statute in question was the Maritime Conventions Act, 1911 (s. 8), though there was always a strong tendency in favour of the practice.

It is useful to remember that in *In re Kerly, Son & Varden* [1901] 1 Ch., at p. 479, it was suggested that the court is unlikely to refuse renewal after an undertaking by solicitors to accept service and appear. Therefore, where a defendant's solicitor has reason to believe that a plaintiff wishes to delay service for some special reason, he should consider carefully the desirability of giving such an undertaking.

If the writ is served after the twelve months, without renewal, the defendant should apply to set it aside, even though it is strictly a nullity.

Order VIII, r. 2, provides that where a writ purports to be marked with the seal of the court, showing it to be renewed, this shall be sufficient evidence of renewal ; but " sufficient " should be read as " *prima facie* " (*Barraclough* v. *Greenough* (1867), L.R. 2 Q.B. 612).

COMMON LAW COMMENTARY

DANGEROUS THINGS: THE RULE IN *RYLANDS* v. *FLETCHER*

This famous leading authority was distinguished by the Court of Appeal in the important case of *Read* v. *J. Lyons and Co., Ltd.* [1945] 1 All E.R. 106 ; 61 T.L.R. 148. The plaintiff was an inspector in an explosives factory run by the defendants as agents of the Minister of Supply. She was injured by an explosion caused, not by the negligence of the defendants, but by the inherently dangerous nature of the materials manufactured.

The leading rule ((1868), L.R. 3 H.L. 330) was that where an occupier of land brings on to it a dangerous thing and keeps it there he does so at his peril, and is responsible for preventing any damage by its escape. An injured party may seek relief against him without proving negligence.

It was on this basis that the plaintiff sought relief in *Read's* case. It was argued that the true principle in *Rylands* v. *Fletcher* was not merely escape from *land* but escape from *control*. This argument failed, and it was held that the rule did not apply to accidents arising out of a process of manufacture and occurring to persons on the premises. A question of *volenti non fit injuria* did not, therefore, have to be decided, though it was doubted whether that defence would be available where the plaintiff was compulsorily directed to the work.

The plaintiff adopted as part of her argument a passage in " Restatement of the Law of Torts," published by the American Law Institute, which runs :

> " 519. Miscarriage of Ultrahazardous Activities Carefully Carried On. Except as stated in sects. 521–524, one who carries on an ultrahazardous activity is liable to another whose person, land or chattels the actor should recognize as like to be harmed by the unpreventable miscarriage of the activity, for harm resulting thereto from that which makes the activity ultrahazardous, although the utmost care is exercised to prevent the harm."

This was held not to be English law.

Leave to appeal to the House of Lords was granted.

SUPERANNUATION FUNDS

It is not possible to refer more than briefly to *Picken* v. *Bruce* (1945), 89 Sol. J. 68, which, indeed, is not strictly a common law case, but practitioners should be aware of its existence. It concerned a superannuation fund established by the Great Northern Railway Co. One of the points of wider application was that if a contributor makes a claim on the fund he must make up any deficiencies arising from contributions having been calculated on a wrong basis.

NEGLIGENCE AND CONDITION OF PUBLIC AIR-RAID SHELTER

In *Baker* v. *Mayor, etc., of Bethnal Green* [1945] 1 All E.R. 135, the plaintiff was injured and her husband and daughter killed when a shelterer fell down the steps of a shelter, and the obstruction thereby occasioned caused other persons to fall. The steps were defective, only faintly illuminated and without a hand-rail down the centre.

Two points of law had to be decided.

First, whether the local authority were acting under s. 4 of the Civil Defence Act, 1939, so that mere non-feasance on their part gave rise to no civil liability. (The failure to exercise statutory powers or to perform statutory duties only gives rise to such liability if the statute in question intended it.) The court held that such a case as this, where the local

authority took over (as tenant) premises for use as an air-raid shelter, and became the occupier, did not come under s. 4, which merely empowers the local authority to execute certain works where it appears to them expedient for certain purposes. The cause of action did not rest on the statutory obligations of the local authority but upon their common law position as being persons in occupation of dangerous premises.

Secondly, whether the injuries were " war injuries " within the meaning of the Personal Injuries (Emergency Provisions) Act, 1939. If so, s. 3 of that Act would bar the injured person from bringing an action for damages for negligence, nuisance, or breach of duty. " War injuries " are defined in s. 8 of the same Act, *inter alia*, as the doing of an injurious act " either by the enemy or in combating the enemy or in repelling an imagined attack by the enemy." The injuries in the present case were held not to be war injuries. They were due to the negligence or breach of duty on the part of the local authority.

LIBEL: A PRIVILEGED OCCASION

Where a cook left his ship in circumstances not amounting to desertion, and he was written down in the ship's log as a deserter, it was held that the occasion was one of qualified privilege. This and other points were decided by Lynskey, J., in *Moore* v. *Canadian Pacific Steamship Co.* [1945] 1 All E.R. 128.

The words were admittedly defamatory, but as the occasion was one of qualified privilege it was only necessary to determine as a fact whether they were written maliciously (and not merely negligently). The judge held that there was no malice and the action for libel failed.

EMPLOYERS' LIABILITY

The common law obligation of employers to provide safe appliances exists not merely while the workman is performing the acts of workmanship which he is engaged to do, but also those acts normally and reasonably incidental to them.

In *Davidson* v. *Handley Page, Ltd.* (1945), 61 T.L.R. 178, the plaintiff went to wash a cup at a tap near some vats containing a slippery fluid. It was known that the fluid was liable to splash over, and it was the allotted duty of a man to wash the floor or sprinkle sawdust on it. At the moment when the plaintiff went to the tap the floor was slippery and had not been sprinkled with sawdust. She therefore slipped and sustained injuries.

It was held that washing the cup was just such an incidental act as is described above, and that the " appliance " was in a dangerous condition at the time of the accident. The plaintiff was therefore entitled to damages.

Lord Greene, M.R., remarked that if the plaintiff had gone to the tap to wash a pair of stockings the liability would not have existed, because this would not have been a normally incidental act.

SILICOSIS AND PNEUMOCONIOSIS

The Various Industries (Silicosis) Scheme, 1931, provides, for the purpose of compensation, that the scheme should apply to all workmen employed in certain processes. In *Reece* v. *Minister of Supply* (1945), 61 T.L.R. 183, the Court of Appeal threw light on the word " employed." It has no relation to the capacity in which the employer contracts to employ the workman; " engaged " (or " occupied " ?) is the true meaning. And " employment from time to time " (*per* Scott, L.J.) is sufficient; it need not be continuous.

By para. 5 of the Silicosis and Asbestosis (Medical Arrangements) Scheme, 1931–1943, a certificate issued by a medical board as to the condition of a workman is conclusive evidence of the matters therein certified. Evidence tendered, at the hearing of an application for arbitration, to contradict the certificate, is inadmissible; but evidence could be tendered to show that the workman had recovered since the date of the certificate (*Chedgy* v. *Somerset Collieries, Ltd.* (1945), 61 T.L.R. 157).

Under the Coal Mining Industry (Pneumoconiosis) Scheme, compensation is limited to (i) 50 per cent. of the workman's previous weekly earnings, (ii) a period of 13 weeks. The limit of 30s. a week under s. 9 (1) (*c*) of the Workmen's Compensation Act, 1925, does not apply to a workman suspended from employment under the Pneumoconiosis Scheme (*Poxon* v. *Woolaton Collieries, Ltd.* [1945] 1 All E.R. 6).

A CONVEYANCER'S DIARY

DEPOSIT ON A PURCHASE OF LAND

A CORRESPONDENT has asked me to deal with the following point: A and B made an arrangement for the sale of property by A to B for £1,000, " subject to contract." This arrangement was fixed up by agents, M & Co., to whom, as stakeholders, B paid a deposit of £100. A draft formal contract was approved by B's solicitors, but, before executing it, B said that he was not going further. The deposit was repaid to him. A few days later B went to other agents, P & Co., through whom he made an offer to purchase the same house for £800, which A accepted. P & Co. then rang up my correspondent, who was A's solicitor, and asked what form of receipt for the new deposit of £80 should be given. My correspondent, faced with this question at a moment's notice and anxious that B should not again back out and recover his deposit, suggested that P & Co. should give a receipt as stakeholders, " subject to formal contract," but with the addition of a statement that the deposit was not to be returned if B unreasonably refused to sign the formal contract. Actually the formal contracts have been exchanged and all is well, but my correspondent asks whether anything can be done " to render the preliminary deposit of any value," having regard to the fact that " there is no legal contract between vendor and purchaser until contracts have been exchanged."

To deal with this inquiry we must return to first principles. At common law a contract for the sale of land was like any other contract; its formation required offer and acceptance, but it could be made by parol. Since the Statute of Frauds, now represented on this point by s. 40 (1) of the Law of Property Act, a contract for the sale of land is not enforceable by action in the absence of a memorandum or note thereof signed by the party to be charged. But if this requirement is fulfilled there is no need of further formality in the making of a binding contract; indeed the average action for specific performance turns on the question whether an inaccurately worded correspondence between two laymen amounts to a binding and enforceable contract through incorporating offer and acceptance in a sufficient memorandum signed by the defendant. A contract comprising the minimum express provisions necessary for there to be a contract at all is an " open " contract, and the decided cases and various sections of the Law of Property Act now lay down with some precision what further terms are implied by law upon an open contract. (An open contract by correspondence is, since 1925, subject to the special statutory conditions prescribed by the Lord Chancellor under L.P.A., s. 46.) There is no rule of law that any deposit must be paid upon an open contract (whether by correspondence or not), but it has long been customary that there should be one, and rules have been evolved as to the rights of the parties in any deposit which there may be. In *Soper* v. *Arnold*, 14 App. Cas. 429, 435, Lord Macnaghten said: " Everybody knows what a deposit is. The purchaser did not want legal advice to tell him that. The deposit serves two purposes—if the purchase is carried out it goes against the purchase money—but its primary purpose is that it is a guarantee that the purchaser means business." A deposit may be made in the absence of any contract at all (as, for instance, in *Chillingworth* v. *Esche* [1924] 1 Ch. 97); if so, it may still fulfil its function as a guarantee, inasmuch as a purchaser shows that he is serious in his intentions if

he is ready to part with possession of a sum of money. But in the absence of some contract, a vendor who gets possession of a sum of the purchaser's money has only one right in respect of it, viz., its bare possession until the purchaser asks for it back. For, in terms of equity, the vendor in such a case holds on a resulting trust; or, in terms of common law, the purchaser can recover the money by an action *quasi ex contractu* for money had and received.

Thus, if the making of a deposit is to be more than a gesture, there must be some contract between the parties. That contract can be either a contract for the sale of land or an express contract about the deposit itself. If the contract is one for the sale of land and a deposit is paid, three things can happen. The contract may deal expressly with the matters relating to the deposit, as in The Law Society's General Conditions. Or, if the contract is by correspondence, the statutory conditions provide the terms which are to relate to a deposit if one is paid. Or, if the contract is just an open one, the common law itself provides rules. And in all cases the court has power, under L.P.A., s. 49 (2), to order the return of a deposit.

Latterly a convention has grown up under which it is rare for parties who have professional advice to be content with an open contract. It is thought necessary to have an express contract, which is now usually framed by reference to one or other of the well-known stock forms of conditions of sale. There is indeed a great fear of open contracts, and efforts are made to prevent their coming into existence. Where the lay parties are *ad idem* but intend to have an express contract professionally settled, the practice is for their agreement to be recorded "subject to contract" or "subject to formal contract." Thus, in *Chillingworth* v. *Esche*, at p. 114, Sargant, L.J., said: "I can quite understand a solicitor saying to a client about to negotiate for the sale of his land: 'Be sure that to protect yourself you introduce into any preliminary contract you may think of making the words "subject to contract."' I do not say that the phrase makes the contract containing it necessarily, and whatever the context, a conditional contract. But they are words appropriate for introducing a condition, and it would require a very strong and exceptional case for this clear *prima facie* meaning to be displaced."

The position thus is that if a deposit is paid on the making of a preliminary agreement for the sale of land subject to contract, the purchaser can claim it back at any time unless there is some legally enforceable bargain about the deposit distinct from the legally unenforceable preliminary agreement for the sale of land. I do not think that this collateral arrangement need be very complicated, but it has got to stand on its own feet as a contract formed by offer and acceptance and supported by consideration. The consideration need present no difficulty as the vendor's undertaking to incur the expense of preparing a draft formal contract is good enough. Nor is writing strictly necessary, though it is most desirable. The real difficulty is to get the purchaser to agree to sign something that is not void for uncertainty. It is on the ground of uncertainty that I have doubts as to the effectiveness of the arrangement employed by my correspondent. The onus would be on the vendor to show clearly that a forfeiture had occurred owing to the purchaser's unreasonable refusal to sign a formal contract. But by what criterion is the reasonableness of his refusal to be judged? For instance, would his refusal be unreasonable if he declined to contract to accept a fifteen years' title or to enter into restrictive covenants? Who is to say what terms would go to make a reasonable contract? I should expect the court to say that it is not there to make bargains for parties, that it can judge the reasonableness neither of the contract submitted by the vendor, nor of the purchaser's action, and therefore that the vendor's onus can never be discharged. It would follow that the purchaser would get his money back. A more hopeful approach would be to set up the views of a third party on the agreed criterion of reasonableness; thus, the parties might contract to execute a formal contract to be settled on behalf of both parties by a named counsel, the deposit to be forfeited if the purchaser refused to sign. Or they might follow the same kind of plan as is found in those restrictive covenants which prohibit activities which in the opinion of the covenantee are objectionable (see *Zetland* v. *Driver* [1939] Ch. 1); thus the forfeiture could be made to occur if in the opinion of X the purchaser's refusal to sign a formal contract is unreasonable. X might be the vendor's solicitor, or some independent party.

But in all this I find myself wondering why a vendor should be so anxious not to make an open contract. Of course, in many cases there are inconvenient easements or incumbrances, or the vendor has not got a full thirty years' title, or he may want the purchaser to enter into restrictive covenants. All these things could in theory be dealt with as special terms of an otherwise open contract made by the lay parties, but obviously it would be better that there should be a formal contract. In the ordinary case of an out and out sale of a house, however, the vendor not having neighbouring property to protect by covenants, would it not be better just to have an open contract? Of course, before advising his client to do such a thing, the vendor's solicitor should look up the papers and satisfy himself that there is a thirty years' title with no incumbrances save such as will be paid off on or before completion. But if these conditions are present, I do not see that the vendor has anything to lose by making an open contract. All he wants is the purchase-money if the sale goes through, plus a right to keep the deposit if the purchaser cries off. We have got so much into the habit of expecting a contract for the sale of land to be made on one of the printed sets of general conditions that we tend to forget that to a vendor with a good title these general conditions bring no benefit for which it is really worth his while postponing the moment when the purchaser is bound. For the purchaser there may, in ordinary times, be more to be said for postponing the binding contract, for instance he may easily wish, after the price is fixed, to search the land charges and local land charges registers, since he purchases with actual notice of their entries (see L.P.A., s. 198 (1)). But even so it is doubtful how much he gains, and he may lose his right to insist on a clear thirty years' title with no obligation to enter into any covenants. Just at present, if the subject-matter is a house, there can be few parts of England where a purchaser would be wise in taking the risk of the vendor being free of any contract for a day longer than is necessary. I appreciate that this plea for more open contracts conflicts with a practice that has become widespread in the last quarter of a century. But I have never been convinced that the stock form conditions were really as necessary as most people seem to think, and my correspondent's case shows the difficulties into which the current conventions lead one. Moreover, there is an important psychological point: if the vendor goes to the purchaser and asks him to agree "subject to contract," but at the same time to make a deposit and to sign a document, however short, which is almost entirely about forfeiture of the deposit, the purchaser's attention will be focused on the forfeiture and it may easily so alarm him that he refuses to sign. On the other hand, if the vendor (having previously seen that his own title is in order) says to the purchaser: "Let us put an agreement for sale on half a sheet of notepaper with no complicated clauses, and we'll both sign and you'll pay me the usual 10 per cent. deposit," the chances are that the purchaser will sign with alacrity. Ultimately each of these cases must depend on the attitude of the particular parties concerned, but, generally speaking, an open contract seems to be the best method for a straightforward case (unless the title is deficient), provided the purchaser will sign one.

Mr. R. H. Bowdler, barrister-at-law, of Oxford, left £27,149, with net personalty £42,735.

Major R. H. Bull, M.C., solicitor, of Pulborough, left £19,518, with net personalty £19,397.

LANDLORD AND TENANT NOTEBOOK

TREES

RECENT correspondence in the Press concerning afforestation, and the recent cold spell which synchronised with a fuel shortage, may both have caused landlords and tenants to contemplate their rights and obligations in the matter of trees on the demised premises.

On most points the law is fairly well settled, and has been so for a long time. If the lease or tenancy agreement is silent on the subject, the position is governed chiefly by the law of waste, though implied obligations not to alter the nature of what is demised (which may or may not be considered part of the law of waste) and to cultivate in accordance with the rules of good husbandry may be brought into operation. A fair illustration of this is afforded by a case decided just a century ago (*Phillipps* v. *Smith* (1845), 14 M. & W. 589), in which the plaintiff landlord considered himself aggrieved by the defendant, his tenant, having cut down and sold some pollard willows. The trees in question grew beside a brook, discharging no useful function by way of protection of the premises or supporting the bank, and the defendant had left butts from which eventually fresh shoots would spring. A jury awarded damages for breach of implied covenant to cultivate in accordance with the rules of good husbandry, but the point of law was reserved, and in argument the Year Book of 12 Henry VIII, 1 (*b*), was cited to show that what had happened did not amount to waste; and Alderson, C.B., referred in the course of his judgment to *Barrett* v. *Barrett* (1628), Hetley 35, as authority for the proposition that what did not prejudice the inheritance by destroying future benefits did not constitute waste.

It may be mentioned that the above case was decided before we had the authority of *Whitham* v. *Kershaw* (1886), 16 Q.B.D. 613, that waste was a tort; since when, it is true, the Law Reform (Miscellaneous Provisions) Act, 1934, has made the distinction immaterial to all intents and purposes.

The length of the tenancy in *Phillipps* v. *Smith* was not mentioned, and it might be of interest to know whether nature was expected to replace before the term would end; it looks as if this were not the case.

When a lease does regulate or modify rights and obligations in the matter of trees, they are usually made the subject of "exceptions and reservations." The practice of both reserving and excepting trees or some of them does not seem to be consistent with good conveyancing, and rather reminds one of the "rolled-up" plea in actions for defamation, by which a defendant avoids committing himself on the question of statement of fact or comment on fact. It is, however, of long standing, and an example can be found in *Whistler* v. *Paslow* (1618), Cro. Jac. 487, in which it was held that the effect of a reservation *and* exception of all wood and underwood had the effect of excluding the soil (some twenty acres), though in the case of timber only what was necessary for growth would be excepted. The point was more thoroughly examined in *Doe d. Douglas* v. *Lock* (1835), 2 A. & E. 705, in which the question at issue was whether a particular lease was authorised by powers, for which purpose it had to be compared with earlier leases; and among the discrepancies alleged was one relating to provisions concerning timber trees: ". . . reserving out of this demise" as opposed to ". . . except and reserved out of this present demise." This caused Denman, C.J., to refer to "Coke-upon-Littleton," 47A: "Note a diversity between an exception (which is ever of part of the thing granted), and of a thing *in esse* . . . and a reservation, which is always of a thing not *in esse*, but newly created or reserved out of the land or tenement demised," but to point out that the learned commentator himself observes later, at p. 143A, "*reserver* . . . sometime hath the force of *saving* or *excepting*. So as sometime it serveth to reserve a new thing, viz., a rent, and sometimes to except part of the thing *in esse* that is granted." The conclusion reached, then, was that it was "a question of construction," and this, I take it, justifies the practice to which I have alluded, which places upon the court the burden of deciding what, in the light of circumstances, and of other words as well as the words "excepting and reserving," the parties meant.

That other people's interests may be affected, however, is illustrated by such a case as *Jenney* v. *Brook* (1844), 6 Q.B. 323, which arose out of the zeal of a local surveyor of highways appointed under the recently enacted Highway Act, 1835, in pruning hedges which obstructed a road beside some demised land, after the plaintiff, summoned as "owner," had failed to comply with an order. He considered himself aggrieved by this proceeding and sued for trespass. The pleas included one based on a provision in the eight-year lease "excepting all timber, timber trees, and other trees . . . bushes and thorns, other than such bushes and thorns as should be necessary for the repair of fences." The suggestion was that what had been pruned were bushes and thorns necessary for repairs, but it was held that what followed "other than" did not constitute an exception from the exception (the majority of the court considered, indeed, that the tenant acquired no interest till the thorns, etc., were assigned to him by the landlord), and the plea failed accordingly.

The facts of the above authority were somewhat unusual, but it serves to point a moral when we consider certain possibilities more recently brought to light by such authorities as *Wilchick* v. *Marks and Silverstone* [1934] 2 K.B. 56, and *Wringe* v. *Cohen* [1940] 1 K.B. 229 (C.A.). For, while *Noble* v. *Harrison* [1926] 2 K.B. 332, may have disposed of the notion that a tree which overhangs a highway automatically constitutes a nuisance, *Wilchick* v. *Marks and Silverstone* showed that a mere right to repair premises, reserved by a landlord, would make him liable (with the occupying tenant) for injury caused to a passer-by in consequence of a defect, and *Wringe* v. *Cohen* decided that this doctrine applied whether he was aware of the danger or not unless due to latent defect or the act of a stranger. In such circumstances as obtained in *Jenney* v. *Brook*, the tenant would have no interest in the trees at all and not even have the status of "occupier"; so a landlord granting a lease on such terms would, especially if elms (noted for treachery) grew on the land and adjoined some highway, do well to protect himself by an appropriate policy of insurance.

TO-DAY AND YESTERDAY

LEGAL CALENDAR

February 19—On the 19th February, 1743, "came on at the Court of King's Bench, the trial of a person for counterfeiting the mark of the Goldsmiths' Company and a verdict (being the fourth on the late Act to prevent frauds in gold and silver wares) was given against him for £100."

February 20—On the 20th February, 1796, "in the King's Bench came on the trial of Kyd Wake for a misdemeanour by hissing and hooting the King as His Majesty was going to the Parliament House on the first day of the present sessions and likewise crying 'Down with George and No War.'" The jury convicted him without hesitation. "A great number of persons attended on the part of the prisoner, but as they could only speak to his general character and not to the case in point, Mr. Erskine, the prisoner's counsel, declined calling upon them, reserving their testimony to be offered in mitigation of punishment." When Wake was brought up for judgment in May, he was condemned to five years' imprisonment with hard labour in Gloucester Gaol. He was also to stand for an hour in the pillory in one of the public streets of Gloucester on a market-day.

February 21—On the 21st February, 1761, John Wesley noted in his diary: "I spent some hours with Mr. Lloyd and Mr. I'Anson in order to prevent another Chancery suit. And though the matter could not be then fully adjusted, yet the suit did not go on."

February 22—In 1938 the assize courts at Winchester were being rebuilt and the sittings returned to their ancient setting, the vast mediæval Hall of the Castle. But the winter's cold proved too much for Mr. Justice Humphreys, and suddenly just before the luncheon adjournment he exclaimed: "Something must be done. It is quite impossible to sit here." He sent for the county architect and told him: "I am not going to have the jury made ill and I have no intention of becoming ill myself if I can avoid it, because I have public work to do. I have to consider the public. Unless this court is habitable to-morrow morning I shall have to adjourn this assize to another town in this county and I shall probably choose Southampton, where they have proper courts. That will be a very considerable expense and inconvenience, but I am not going to sit in a place like this where my right hand is so cold that I can hardly write." The threat to transfer the assizes to Southampton was seriously meant, for the courts there were perhaps the most luxurious in England. Within half an hour a score of workmen were at work with lorry loads of timber. They put in six additional electric heaters, one over the judge's dais pointing downwards to keep his hands warm. They even climbed to the roof to nail sacking over the ventilators. Extra porches and airlocks were hurriedly fixed up.

February 23—Next day, the 23rd February, Mr. Justice Humphreys, on taking his seat, congratulated the workmen, adding: "I am very much obliged to them. It is now going to be very hot." There was laughter at this, and he said: "I think that this will be quite comfortable, but perhaps someone will tell the person in charge of the heating that we shall not want much heat on." A little later one of the jurors fainted and had to be carried out of court. At the end of the day's sitting the judge again asked for the county architect, but was told that he was in bed, having been up all night supervising the alterations. The judge then said that he had had a letter from a man "who has the misfortune to be here as a witness" and who stated that he had had to stand for five hours on a stone floor at the end of the Hall with no heating but two evil-smelling oil lamps. "This gentleman," said the judge, "observes that he wondered if the cells below might not be more comfortable than the places reserved for witnesses."

February 24—On the 24th February, 1601, while Serjeant Daniel was holding the Rochester Assizes as Commissioner, a convicted felon claimed benefit of clergy and submitted to the test of literacy which was regarded as establishing the right. In Manningham's Diary the incident is thus related: "There was one had his booke given him at the prisoners' barr, where the ordinary useth to heare and certifie there readinge. And one Mr. Gylburne start up sayinge 'He will reade as well as my horse,' which wordes Serjeant Daniel, having before allowed the cleargy, tooke very ill, telling him playnely that he was too hasty: and yet caused the prisoner to be brought nearer that Gylburne might hear him reade and he reade perfectly."

February 25—On the 25th February, 1879, Charles Peace was hanged at Leeds in Armley Prison for the murder of Arthur Dyson. The ugly, shuffling little man, with his sallow lined face, his huge distended nostrils and his small, ferrety, malicious eyes had gained a legendary reputation as a burglar and the most notorious criminal of the day. On the morning of his execution he said to one of the warders: "You're in a hell of a hurry. Are *you* going to be hanged or am I?" He walked to the scaffold without a falter. His last speech was: "Now, gentlemen, you reporters, I wish you to notice a few words I am going to say. You know that my life has been a bad one, so that when you find that I died in the fear of the Lord you will see what sustained me now. Gentlemen, tell my friends that, thank the Lord, I feel quite sure my sins are forgiven me, and that I can now die happy." He sent his wife a formal memorial card with these words at the foot: "For that I don but never intended."

SINGING LAWYERS.

Not long ago, when a gathering of judges celebrated at a Piccadilly club the twenty-fifth anniversary of the appointment of Lord Russell of Killowen to the judicial bench, Lord Russell himself, who, in his young days at the bar, was known to possess the subsidiary talent of singing comic songs, is reported to have sung again. It was Lord Russell who delighted old Charles Coborn, the veteran music hall star, just before the war by recognising him in the Judicial Committee of the Privy Council when he came to listen to an appeal involving the rights in his famous song "The Man who Broke the Bank at Monte Carlo." The tradition of good songs is more widespread among common law men than in Chancery, for the circuit messes were ever great nurseries of the talent. Even when he was Lord Chief Justice, Sir Alexander Cockburn, dining with the bar on the Western Circuit, was not offended at being called on, and sang "The Poacher" with great gusto and style—"It is my delight on a shiny night." Sir Edward Clarke in his younger days was in demand as a singer. In his "Forty Years at the Bar" Edward Abinger gave an ill-recollected account of his performances, writing that "he only knew one song, which consisted (to the best of my memory) of at least twenty verses," and purporting to quote a stanza from it, beginning "Just before the battle, Mother." This annoyed Clarke, who put on record: "This is all wrong. I used to sing many different songs. And the 'Just before the battle' song had only three or four verses which were never varied or added to." Even the verse quoted was inaccurately remembered. Before the war the annual smoking concerts in Gray's Inn Hall were famous, and, at that convivial Inn, Grand Nights too often produced bursts of song.

COUNTY COURT LETTER

Statutory Tenancy of Service Flats

In *Engvall* v. *Ideal Flats, Ltd.*, at Cheltenham County Court, the claim was for £8 18s. 6d. as damages for breach of the conditions of a statutory tenancy. The plaintiff's case was that she has been the contractual tenant of a service flat at Montpellier Terrace, Cheltenham. The defendants were the landlords, and they provided hot water and heating. On the plaintiff becoming a statutory tenant, the defendants ceased to supply the above services. The defendants' case was that the obligation to provide the services came to an end with the termination of the contractual tenancy by notice to quit. As a statutory tenant, the plaintiff had no right to a continuation of services. His Honour Judge Donald Hurst gave judgment for the plaintiff. This decision has been upheld by the Court of Appeal. Lord Greene, M.R., remarked that, if the landlords could stop the services at the end of the contractual tenancy, the value of the statutory tenancy would be destroyed. The appeal was therefore dismissed, with costs.

Conversion of Sporting Guns

In *Hambro* v. *Smith*, at Bournemouth County Court, the claim was for the return of two sporting guns, or £135 their value, and £25 as damages for their detention. The plaintiff's case was that the defendant was a dealer, who had sold a car on her behalf. In a subsequent conversation, the plaintiff mentioned that other members of the family might wish to sell two sporting guns. There was some doubt about this, as the guns had the family crest on them. The defendant, however, was permitted to take the guns—but only to try them out. He was subsequently asked to return them, but replied that he must have misunderstood his instructions, as he had sold the guns. The defendant therefore agreed to pay £135, but had sent a cheque dated the 29th February—a non-existent date in 1945. The cheque, therefore, was useless. The defendant's case was that he hoped to get the guns back, in which event he would restore them to the plaintiff. His Honour Judge Cave, K.C., gave judgment for the plaintiff for both the amounts claimed, with costs.

NOTES OF CASES

HOUSE OF LORDS

Cricklewood Property and Investment Trust, Ltd. *v.* Leighton's Investment Trust, Ltd.

Viscount Simon, L.C., Lord Russell of Killowen, Lord Wright, Lord Porter and Lord Goddard. 25th January, 1945.

Contract—Frustration—Ninety-nine years' building lease—Whether doctrine of frustration applicable.

Appeal from a decision of the Court of Appeal (87 SOL. J. 273), affirming a decision of Asquith, J.

By a lease dated 12th May, 1936, F, Ltd., demised to the defendant company for ninety-nine years from 25th March, 1936, ten shop sites coloured red and fourteen shop sites coloured blue on the annexed plan. The defendant company covenanted to build shops on both sites, eight of them, which were duly completed, to be erected not later than 25th March, 1937, on the red land, and the remainder at a subsequent date. The defendant company were also given an option to purchase the freehold of the sites, and have purchased the red land. In 1938, F, Ltd., sold the reversion to the plaintiff company. The plaintiffs in the action claimed payment from the defendants of £419 14s. 3d. in respect of arrears of rent. The affidavit in defence stated that no obligation on the part of the defendant company to erect shops on the blue land arose until after the outbreak of the present war, when the demand for the shops ceased, finance for their erection became unobtainable, and the restrictions placed by the Government upon building and materials, made it impossible to erect shops on any of the sites or to continue the development of the sites. The defendants accordingly alleged that the agreement of lease of 12th May, 1936, had been frustrated. Asquith, J., held that the doctrine of frustration did not apply to leases, and the Court of Appeal affirmed his decision. The defendants appealed.

VISCOUNT SIMON, L.C., said that the appeal raised two questions: first, could the doctrine of frustration apply to determine a lease, and, secondly, even if it could, were the circumstances in the present case such as to produce the result that the lease had been determined by frustration. As they were all agreed that the answer to the second question was in the negative, it was not essential to reach a conclusion on the first. He proposed however to express his opinion with regard to both questions, since it was pronounced upon in the courts below, where it was regarded as concluded by the decision in *Matthey* v. *Curling* [1926] 2 A.C. 180. The broad issue must be first considered as though it were *res integra*. Frustration was the premature determination of an agreement between parties, lawfully entered into and in course of operation at the time of its premature determination, owing to the occurrence of an intervening event or change of circumstances so fundamental as to be regarded by the law both as striking at the root of the agreement, and as entirely beyond what was contemplated by the parties when they entered into the agreement. If, therefore, the intervening circumstance was one which the law would not regard as so fundamental as to destroy the basis of the agreement, there was no frustration. Equally, if the terms of the agreement showed that the parties contemplated the possibility of such an intervening circumstance arising, frustration did not occur. Neither did it arise when one of the parties had deliberately brought about the supervening event by his own choice (*Joseph Constantine S.S. Line* v. *Imperial Smelting Corporation, Ltd.* [1942] A.C. 160). But where it did arise, frustration operated to bring the agreement to an end as regards both parties forthwith and quite apart from their volition. Was there any good reason why the conception of frustration should not ever apply to a lease of land and result in its premature determination. He did not feel able to assert any *a priori* an absolute impossibility, though the instances in which the doctrine might apply to such a lease were undoubtedly very rare. A lease of land created in the lessee an estate which was a chattel interest (Law of Property Act, 1925, s. 1 (1) (*b*)). The question was whether in addition to predetermination of the lease under an express provision, it was possible that a lease for years should predetermine from a supervening cause which amounted to frustration. Where the case was a simple lease for years, the tenant being free to use the land as he liked, it was difficult to imagine an event which could prematurely determine the lease by frustration. If, however, the lease was expressed to be for the purpose of building, it was less difficult to imagine how frustration might arise. Supposing, for example, legislation was passed which permanently prohibited building, why should not this bring to an end the currency of a building lease. An examination of the decided cases satisfied him that it was erroneous to suppose that there was authority binding on the House to the effect that a lease could not in any circumstances be ended by frustration. *Matthey* v. *Curling* [1922] 2 A.C. 180, was not such an authority. The occasions however in which frustration would terminate a lease must be exceedingly rare. There remained the practical issue whether what had been proved in this case would be enough to constitute frustration. The lease had more than ninety years to run. The length of the interruption caused by the war was presumably a small fraction of the whole term. Frustration, where it existed, did not work suspension, but brought the whole arrangement to an inevitable end forthwith. Here the lease contemplated that rent might be payable, although no building was going on. He could not regard the interruption which had arisen, as such as to destroy the identity of the arrangement or make it unreasonable to carry out the lease according to its terms as soon as the interruption in building was over. That was the test for frustration. On the facts the liability for rent under the covenant continued uninterrupted. The appeal should be dismissed.

The other noble and learned lords agreed in dismissing the appeal on the facts. Lord Wright and Lord Porter expressed the opinion that, in exceptional circumstances, the doctrine of frustration might apply to leases. Lord Russell of Killowen and Lord Goddard were of opinion that it could never apply.

COUNSEL: *Roland Burrows*, K.C., and *Robert Fortune*; *St. John Field*, K.C., *Gerald Gardiner* and *Douglas Lowe*.

SOLICITORS: *Langford, Borrowdale & Thain*; *Leslie Freeman and Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

COURT OF APPEAL

In re **Berkeley; Borrer** *v.* **Berkeley (No. 2)**

Lord Greene, M.R., Finlay and Morton, L.JJ.
13th December, 1944

Will—Annuity bequeathed tax free by will made before 3rd September, 1939—By codicil of 1940 priority of annuities varied and additional property charged—Whether "varied"—"Stated amount"—Meaning—Finance Act, 1941 (4 & 5 Geo. 6, c. 30), s. 25 (1).

Appeal from a decision of Cohen, J.

The Finance Act, 1941, s. 25 (1), provides: " . . . any provision, however worded, for the payment . . . of a stated amount free of income tax . . . being a provision which (*a*) is contained . . . in any will or codicil . . . ; (*b*) was made before 3rd September 1939; and (*c*) has not been varied on or after that date, shall, as respects payments falling to be made during any year of assessment, the standard rate of income tax for which is 10s. in the £, have effect as if for the stated amount there were substituted an amount equal to twenty twenty-ninths thereof." The testator by his will dated the 10th November, 1936, gave to his stepdaughter and to his executors annuities free of income tax at the standard rate. By a codicil dated 3rd December, 1938, he gave to his wife "an annuity of such an amount as may in any or every year after my death be required to make up to the total sum of £5,000 clear of all death duties and income tax the annual net income to be received by her under my said will . . . and under my marriage settlement." By a codicil dated the 14th September, 1940, he provided that the annuity payable to his wife was to be payable in priority to all other annuities and the annuity payable to his stepdaughter was to be payable in priority to all other annuities other than the annuity payable to his widow. He further charged these annuities on certain specified properties. He expressly confirmed his will. The testator died in 1942. This summons raised the question whether s. 25 of the Act of 1941 applied to the annuities. Cohen, J., held it did not.

LORD GREENE, M.R., said that it was settled by the decision in *In re Sebag-Montefiore* [1944] Ch. 331; 88 SOL. J. 238, that where there was a confirmation of the will in a codicil made after the 3rd September, 1939, the relevant provisions were not to be regarded as made after the 3rd September, 1939. It was said, in the first place, that the section did not apply, as the annuity given to the widow was not "a stated amount." In his opinion that argument was erroneous. The right of the widow was to receive an annuity and the amount of that annuity would be precisely ascertained at the appropriate time, and, as soon as it was ascertained, the obligation of the trustees to pay it came into operation. There was no difficulty in ascertaining what the amount was in any fiscal year. It was contended that the wor

" stated " could only be satisfied where the amount was definitely fixed by the provision in question. No such force ought to be given to the word " stated." The document did state the amount, because it determined precisely the measure of liability. The principle of *id certum est quod certum reddi potest* was applicable. This was the view taken in *In re Bird* [1944] Ch. 111; 87 Sol. J. 447, and by Lord Keith in the Scottish case of *Holmpatrick* v. *Ainsworth* [1943] S.C. 75. It was further argued that s. 25 did not apply because the codicil of 1940 had " varied " the provision in two respects: (1) in respect of priorities, and (2) in respect of security. That amounted, it was said, to an improvement in the position of the annuitants and was a variation within s. 25 (1) (*c*). That argument also failed. He had come to the conclusion that the variation required was a variation of the tax-free directions of the provision in question. The mere giving of priority and the addition of security did not amount to a variation when the amount and the tax-free direction was left unimpaired. There remained the question what, in the case of the widow, was the " stated amount." On the one hand, it was argued that it was the £5,000 net to which the income of the widow was to be brought up. The contention, on the other hand, was that the stated amount for the purpose of the section was that unspecified, but ascertainable, amount which the estate had to pay out in cash to make the income up to £5,000 net. That sum he would refer to as *x*. Was the stated sum £5,000 or *x*? In his opinion it was quite clearly *x*. *X* as grossed up was the sum which had been bequeathed. That was the sum which the estate had to find and pay and the sum in respect of which tax was leviable by the Revenue. The appeal must be allowed.

Finlay and Morton, L.JJ., agreed in allowing the appeal.

Counsel: *J. H. Stamp* and *J. V. Nesbitt; Wilfrid Hunt; Gravenor Hewins; Eardley-Wilmot.*

Solicitors: *Garrard, Wolfe & Co.; Field, Roscoe & Co.; Culross & Co.; Boodle, Hatfield & Co.*

[Reported by Miss B. A. Bicknell Barrister-at-Law.]

CHANCERY DIVISION

In re **Cochrane; Cochrane** *v.* **Turner**

Uthwatt, J. 7th December, 1944

Revenue—Estate duty—Marriage settlement—Funds settled by husband on wife for life—Income to be expended by wife on household expenses—Death of husband—Liability of funds to duty—Finance Act, 1894 (57 & 58 *Vict.* c. 30), *s.* 2 (1) (*c*).

Adjourned summons.

By a marriage settlement dated 23rd September, 1884, the husband transferred a trust fund to trustees upon trust to pay the income to the wife during her life and after her death to the husband for life, with ultimate trusts for all the children of the husband. The settlement contained the following provision: " And it is also agreed and declared that the income arising from the said trust fund to be paid by the trustees or trustee to the wife during her life shall be expended by her on current household expenses or management." The marriage lasted for some fifty-seven years until the death of the husband. The whole income of the settlement funds, amounting to £400 a year, was for the entire period applied by the wife for her own personal purposes. The husband paid to her in addition £3,000 a year, which was applied by her in paying the indoor expenses of the matrimonial home. This summons was taken out asking whether, on the true construction of the Finance Act, 1894, s. 2 (1) (*c*), the trustees of the settlement were accountable for estate duty in respect of the settlement funds, on the footing that the funds passed, or were deemed to pass, on the husband's death.

Uthwatt, J., said that the crown claimed that the provision in the settlement, under which the wife's income was applicable for household expenses, gave the husband an interest in the trust funds for his life, so that on his death duty became payable under s. 2 of the Act of 1894. On the other hand he was asked to draw the inference that, assuming the provision in the deed had the result of creating a charge in favour of the husband, the husband abandoned or released his interest. The facts might permit this inference, but he did not draw it. Direct evidence of intention to abandon the interest was absent. The provision was not in common form and reflected the mind of the husband, rather than the habits of his draftsman. The obvious inference was that the husband would pray in aid its benefits only in case circumstances should require it. His long acquiescence in the wife's use of the income merely marked the fact that there was no need for him to rely on the provisions and did not suggest he gave up his rights. The husband had a right to require that any current household expenses should be met out of the settlement income. This right extended to and gave him an interest in the whole income. If he survived his wife, he was entitled to the whole income for his life. The husband's interest under the settlement could only be ascertained by taking the two rights together. That interest was, as regards its duration, an interest for the life of the husband. The possible change in its character during his life was immaterial. There was accordingly by the settlement reserved to the husband an interest for life within s. 2 (1) (*c*). Estate duty became payable on the death of the husband.

Counsel: *Hubert Rose; Harold Lightman; J. H. Stamp.*

Solicitors: *Bentleys, Stokes & Lowless*, for *Belk & Smith*, Middlesbrough; *Solicitor of Inland Revenue.*

[Reported by Miss B. A. Bicknell, Barrister-at-Law.]

In re **Warden and Hotchkiss, Ltd.**

Uthwatt, J. 21st December, 1944

Company—Special resolution—Articles—Seven days' notice to be given of general meeting—Notice not given to members in South Africa—Special resolution passed at meeting invalid.

Petition.

The articles of association of W., Ltd., provided: Regulation 42, " Seven days' notice at least, specifying the place, the date, and the hour of meeting, and, in case of special business, the general nature of such business, shall be given to the members in manner hereinafter mentioned, . . . but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting." Regulation 109, " A notice may be served by the company on any member, either personally or by sending it through the post in a prepaid letter . . ." Regulation 111, " Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of post . . ." On the 14th January, 1944, the company held a meeting at which it purported to pass a special resolution providing for an alteration of its objects. By this petition the company applied under s. 5 of the Companies Act, 1929, for the confirmation by the court of the proposed alterations. All the members of the company, except five, who were resident in South Africa, were duly served with notice of the meeting.

Uthwatt, J., said it was argued that it was not necessary to serve the five South African members, and that the special resolution was passed at a duly convened meeting. Section 117 (6) of the Companies Act, 1929, provided that for the purpose of the section a notice of a meeting should be duly given when the notice was given " in manner provided by this Act or the articles." The reference to " this Act " was a reference to s. 115. There had been no order under s. 115 (2). The matter was therefore governed by the company's articles of association. The sole question here was whether, on the true construction of the articles, service on members with registered addresses abroad was demanded. Looking at the matter apart from authority, it was, to his mind, apparent that under reg. 42 notices were required to be sent to all members. There was no ambiguity or vagueness of expression which enabled him to read into regs. 42, 109 or 111 any exception, excluding from members to whom notices were to be given members with foreign registered addresses. There was some authority on the matter, namely *Smith* v. *Darley* (1849), 2 H.L. Cas. 789; *In re Union Hill Silver Co., Ltd.* (1870), 22 L.T. 400, which latter case was followed by Maugham, J., in *In re Newcastle United Football Co., Ltd.* [1932] W.N. 109. The latter authority had not been accepted in practice. The practice in the chambers of the Companies Court had been to refuse to certify that a special resolution had been duly passed in cases such as the present. In the circumstances he did not feel he was bound to follow *In re Union Hill Silver Co., Ltd., supra*, and give a decision for which he could not adduce any reason. He would hold that the supposed resolution was not validly passed. Petition dismissed.

Counsel: *Gordon Brown*, for the company.

Solicitors: *Burton, Yeates & Hart*, for *Johnson & Co.*, Birmingham.

[Reported by Miss B. A. Bicknell, Barrister-at-Law.]

REVIEW

The Dodecanese. A Study of International Law. By Dr. Anthony Tsakalakis. (1944). pp. 64. London: King, Littlewood & King, Ltd. 3s. 6d.

In this short thesis the Greek case regarding the Dodecanese is presented with admirable clarity. The history of the islands from the earliest times is briefly sketched, and the documents

quoted range from the Firman of the Sultan Mehmed IV (1652) to the Treaty of Lausanne (1923). It is a pity that a speech, by Prime Minister Ramsay MacDonald of 25th February, 1924, is badly paraphrased on p. 47, and it is not easy to agree that "objective minds concerned only with realities will admit that the question of the Dodecanese can hardly be considered as an international problem" (p. iii). It is an international problem precisely because it can only be settled internationally. The correct version of MacDonald's speech makes that clear.

BOOKS RECEIVED

Consolidated Second Supplement to the Ninth Edition of Dymond's Death Duties. 1945. pp. 31. London: The Solicitors' Law Stationery Society, Ltd. 2s. 6d. net.

Burke's Loose-leaf War Legislation. Edited by HAROLD PARRISH, Barrister-at-Law. 1943–44 Volume. Part 15. London: Hamish Hamilton (Law Books), Ltd.

The Complete Valuation Practice. Second Edition, by H. BRIAN EVE, F.S.I., and N. E. MUSTOE, M.A., LL.B., of Gray's Inn, Barrister-at-Law. 1945. pp. xvi and (with Index) 414. London: The Estates Gazette, Ltd. 30s. net.

Citizen's Advice Notes. A Service of Information compiled from Authoritative Sources. New Edition, 1944. London: The National Council of Social Service: Initial Subscription £2 2s., covering the loose-leaf volume and all amendments and additions up to 31st August, 1945; Renewal Subscription for following twelve months, £1 1s. (approx.).

The North Carolina Law Review. December, 1944.

OBITUARY

SIR WALTER NAPIER

Sir Walter Napier, D.C.L., formerly Attorney-General, Straits Settlements, died on Wednesday, 14th February, aged eighty-eight. He was educated at Rugby and Corpus Christi College, Oxford, and was called by Lincoln's Inn in 1881. He was an authority on colonial legal systems.

MR. H. F. F. GREENLAND

Mr. Hubert Francis Flower Greenland, barrister-at-law, died on Tuesday, 13th February, aged seventy-four. He was educated at Merchant Taylors' and St. John's College, Oxford, and was called by Lincoln's Inn in 1895. He was a Bencher of his Inn.

MR. W. F. TROTTER

Mr. William Finlayson Trotter, Emeritus Professor of Law at Sheffield University, died on Thursday, 8th February, aged seventy-three. He was called by Lincoln's Inn in 1903.

MR. R. DODD

Mr. Reginald Dodd, barrister-at-law, of Lincoln's Inn, died on Thursday, 15th February. He was called by Lincoln's Inn in 1892.

MR. A. J. B. TAPLING

Mr. Alfred John Barton Tapling, barrister-at-law, died on Friday, 16th February. He was called by Lincoln's Inn in 1894.

MR. H. K. GRIERSON

Mr. Hugh Kirkpatrick Grierson, solicitor, of Messrs. Lomer and Grierson, solicitors, of Southampton, died on Wednesday, 7th February, aged eighty-five. He was admitted in 1882.

MR. A. F. V. WILD

Mr. Arthur Francis Verulam Wild, solicitor, of Messrs. Wild and Son, solicitors, of Grape Street, W.C.2, and Whitstable, Kent, died on Wednesday, 14th February, aged eighty-two. He was admitted in 1887.

PARLIAMENTARY NEWS

ROYAL ASSENT

The following Bills received the Royal Assent on 15th February:—

NURSES.

REPRESENTATION OF THE PEOPLE.

HOUSE OF LORDS

EXPORT GUARANTEES BILL [H.C.].
Read First Time. [13th February.

TEACHERS (SUPERANNUATION) BILL [H.C.].
Read Second Time. [13th February.

WAGES COUNCILS BILL [H.C.].
Read Second Time. [13th February.

HOUSE OF COMMONS

COLONIAL DEVELOPMENT AND WELFARE BILL [H.C.].
Read Third Time. [16th February.

COMPENSATION OF DISPLACED OFFICERS (WAR SERVICE) BILL [H.C.].
Read Third Time. [16th February.

FAMILY ALLOWANCES BILL [H.C.].
To provide for the payment of family allowances.
Read First Time. [14th February.

HYDRO-ELECTRIC UNDERTAKINGS (VALUATION FOR RATING) (SCOTLAND) BILL [H.C.].
Read Second Time. [14th February.

INCOME TAX BILL [H.C.].
To amend the law relating to income tax in certain respects.
Read First Time. [14th February.

INDIA (ESTATE DUTY) BILL [H.L.].
Read Second Time. [16th February.

MINISTRY OF FUEL AND POWER BILL [H.C.].
To make further provision with respect to the appointment and functions of the Minister of Fuel and Power, and for purposes connected therewith.
Read First Time. [13th February.

NEWPORT (ISLE OF WIGHT) CORPORATION BILL [H.C.].
Read Second Time. [13th February.

NORTHERN IRELAND (MISCELLANEOUS PROVISIONS) BILL [H.C.]
Read Second Time. [16th February.

REQUISITIONED LAND AND WAR WORKS BILL [H.C.].
Read Second Time. [13th February.

TOWN AND COUNTRY PLANNING (SCOTLAND) BILL [H.C.].
Read Second Time. [14th February.

WELSH CHURCH (BURIAL GROUNDS) BILL [H.C.].
To amend the provisions of the Welsh Church Act, 1914, relating to burial grounds.
Read First Time. [16th February.

QUESTIONS TO MINISTERS

SELLING PRICE OF HOUSES

Mr. HARRY THORNEYCROFT asked the Prime Minister whether he is now in a position to announce the Government's policy on the question of controlling or regulating the price at which dwelling-houses may be sold.

The DEPUTY PRIME MINISTER (Mr. Attlee): Yes, sir. My right hon. and learned friend the Minister of Health and my right hon. friend the Secretary of State for Scotland, are appointing a Committee, with the following terms of reference:

> "To consider, and report, whether it is practicable to control effectively the selling price of houses with, or without, vacant possession and to prevent undue financial advantage being taken of the present housing shortage; and, if so, what measures should be adopted to effect these objects."

The membership of the Committee will be announced shortly. [13th February.

WAR DAMAGE: DEEDS OF PROPERTY

LADY APSLEY asked the Chancellor of the Exchequer what provision is made by the War Damage Commission to replace for owners of houses and shops deeds of property which they have lost owing to enemy action.

Sir JOHN ANDERSON: Part I of the War Damage Act, 1943, covers physical damage to property but not loss or damage consequential upon such damage, of which the instance given in the question is only one of many possible examples. So far as Pt. II is concerned, documents of this kind and of similar kinds are expressly excluded from the definition of goods which can be insured. [13th February.

WAR LEGISLATION

STATUTORY RULES AND ORDERS, 1944–1945

E.P. 140. **Control of Building Operations** (Amendment) (No. 4) Order, Feb. 5.

No. 152. **Education,** England and Wales. Central Advisory Councils for Education Regulations. Feb. 7.

No. 158. **Fire Services** (Emergency Provisions) National Fire Service (Alteration of Fire Areas) Regulations. Feb. 9.

No. 156. Fire Services (Emergency Provisions) National Fire Service (Preservation of Pensions) (Police and Fireman) Regulations. Feb. 8.

E.P. 131. **Food** (Licensing of Retailers). Feb. 3.

No. 127. **National Registration** Amendment Regulations. Jan. 31.

No. 153. **Pension.** Injury Warrant. Feb. 3.
No. 145. **Trading with the Enemy,** Bulgaria. General Licence. Feb. 9.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2]

NOTES AND NEWS

Honours and Appointments

The following appointments have been made in the Colonial Legal Service :—

M. J. P. HOGAN, Crown Counsel, Palestine, to be Attorney-General, Aden ; D. R. McDonald, Registrar-General, Tanganyika, to be Custodian of Enemy Property, Tanganyika ; B. V. Shaw, President of the District Courts, Palestine, to be Puisne Judge, Palestine ; J. B. Thomson, Resident Magistrate, Northern Rhodesia, to be Puisne Judge, Fiji.

The Lord Chancellor has appointed Sir RUPERT HOWORTH, K.C.M.G., C.B., to be Secretary of Commissions of the Peace in the place of Mr. Leo Page, who has resigned. Sir Rupert Howorth was called by the Inner Temple in 1905.

Mr. PAUL ARCHER, O.B.E., solicitor, Manchester, has been appointed Deputy Public Trustee at the Manchester Branch Office of the Public Trustee. He is an ex-President of the Manchester Law Society and was admitted in 1908.

Sir GEORGE ETHERTON, formerly Clerk of the Lancashire County Council, has been appointed a member of the War Damage Commission. He was admitted in 1902.

Notes

It is officially reported that The Inns of Court Regiment has been fighting in North-West Europe since D Day, for the most part as an armoured-car regiment.

Lord Merriman, during the hearing of a service man's petition in the Divorce Court recently, said that he had seen something in the Press lately about the delay in service men's cases in the Divorce Court. The following dates in the case before him might be instructive : Adultery charged from November, 1944 petition dated 31st January, 1945 ; and to-day was 15th February.

POST-WAR AID FOR SOLICITORS

Provincial law societies are collaborating in the decentralisation of a national scheme, drawn up by The Law Society, for the re-establishment in civil life of solicitors and articled clerks serving in all theatres of war, who will receive a personal letter giving them full details of the rehabilitation plan. The letter has been addressed care of a solicitor still in practice, where this is the only permanent address in the Society's possession, and the Council hope that such solicitors will assist by seeing that the circulars are forwarded to the addressees.

COMMERCIAL AND BUSINESS CORRESPONDENCE WITH FINLAND

1. The Board of Trade announce that by arrangement with the Postmaster-General they have made a General Licence (S.R. & O., 1945, No. 182) authorising business correspondence with Finland. Banks on and from the 19th February, 1945, and other financial institutions may now reply to requests for information from their depositors in Finland, documents such as birth, death, marriage certificates and wills may be transmitted, and British and Finnish firms may exchange business information with a view to the future resumption of business relationships. The resumption of private trade is not yet permissible. The despatch of powers of attorney and proxies is subject to the normal procedure under the Defence (Finance) Regulations.

2. For the time being an air mail service only will be available to Finland. Correspondence may be registered but not insured ; the limit of weight is 2 oz. Newspapers and other printed matter cannot be despatched without a censorship permit. No money order or parcel post service is available.

3. Finnish owned property in the United Kingdom will continue to be under the control of the Trading with the Enemy Department and the Custodians of Enemy Property.

4. Applications and enquiries by persons in the United Kingdom about British property in Finland should be addressed to the Consular Department of the Foreign Office.

Mr. M. M. Merriman, solicitor, of Tunbridge Wells, left £37,932, with net personalty £29,248.

STOCK EXCHANGE PRICES OF CERTAIN TRUSTEE SECURITIES

Bank Rate (26th October, 1939) 2%

	Div. Months	Middle Price 19th Feb. 1945	Flat Interest Yield £ s. d.	‡ Approximate Yield with redemption £ s. d.
English Government Securities				
Consols 4% 1957 or after	FA	111	3 12 1	2 18 1
Consols 2½%	JAJO	83	3 0 3	—
War Loan 3% 1955–59	AO	103¼	2 18 1	2 12 6
War Loan 3½% 1952 or after	JD	105	3 6 8	2 15 0
Funding 4% Loan 1960–90	MN	114¾	3 9 8	2 15 9
Funding 3% Loan 1959–69	AO	101½	2 19 1	2 17 4
Funding 2¾% Loan 1952–57	JD	101¼	2 14 3	2 11 1
Funding 2½% Loan 1956–61	AO	99	2 10 6	2 11 6
Victory 4% Loan Av. life 18 years	MS	113¼	3 10 8	3 0 8
Conversion 3½% Loan 1961 or after	AO	107	3 5 5	2 18 10
Conversion 3% Loan 1948–53	MS	102¾	2 18 4	2 0 0
National Defence Loan 3% 1954–58	JJ	102½	2 18 6	2 13 8
National War Bonds 2½% 1952–54	MS	100⅞	2 9 6	2 7 6
Savings Bonds 3% 1955–65	FA	101¼	2 19 3	2 17 1
Savings Bonds 3% 1960–70	MS	100¼	2 19 10	2 19 8
Local Loans 3% Stock	JAJO	95½	3 2 10	—
Bank Stock	AO	387½	3 1 11	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	97	3 1 10	—
Guaranteed 2¾% Stock (Irish Land Act 1903)	JJ	92½	2 19 6	—
Redemption 3% 1986–96	AO	100½	2 19 8	2 19 7
Sudan 4½% 1939–73 Av. life 16 years	FA	114	3 18 11	3 7 0
Sudan 4% 1974 Red. in part after 1950	MN	112	3 11 5	1 12 7
Tanganyika 4% Guaranteed 1951–71	FA	106	3 15 6	2 17 11
Lon. Elec. T.F. Corp. 2½% 1950–55	FA	98	2 11 0	2 14 4
Colonial Securities				
*Australia (Commonw'h) 4% 1955–70	JJ	107	3 14 9	3 3 5
Australia (Commonw'h) 3¼% 1964–74	JJ	100	3 5 0	3 5 0
Australia (Commonw'h) 3% 1955–58	AO	100	3 0 0	3 0 0
†Nigeria 4% 1963	AO	114	3 10 2	3 0 6
*Queensland 3½% 1950–70	JJ	101	3 9 4	3 5 6
Southern Rhodesia 3½% 1961–66	JJ	104	3 7 4	3 3 6
Trinidad 3% 1965–70	AO	100	3 0 0	3 0 0
Corporation Stocks				
*Birmingham 3% 1947 or after	JJ	94½	3 3 6	—
*Croydon 3% 1940–60	AO	101	2 19 5	—
*Leeds 3¼% 1958–62	JJ	102	3 3 9	3 1 5
*Liverpool 3% 1954–64	MN	100	3 0 0	3 0 0
Liverpool 3¼% Red'mable by agreement with holders or by purchase	JAJO	106	3 6 0	—
London County 3% Con. Stock after 1920 at option of Corporation	MSJD	95	3 3 2	—
*London County 3½% 1954–59	FA	105	3 6 8	2 17 9
Manchester 3% 1941 or after	FA	94	3 3 10	—
*Manchester 3% 1958–63	AO	101	2 19 5	2 18 2
Met. Water Board 3% "A" 1963–2003	AO	98	3 1 3	3 1 5
Do. do. 3% "B" 1934–2003	MS	98½	3 0 11	3 1 2
Do. do. 3% "E" 1953–73	JJ	99	3 0 7	3 1 1
Middlesex C.C. 3% 1961–66	MS	101	2 19 5	2 18 5
*Newcastle 3% Consolidated 1957	MS	101	2 19 5	2 18 2
Nottingham 3% Irredeemable	MN	94½	3 3 6	—
Sheffield Corporation 3¼% 1968	JJ	107	3 5 5	3 1 6
English Railway Debenture and Preference Stocks				
Gt. Western Rly. 4% Debenture	JJ	116½	3 8 8	—
Gt. Western Rly. 4½% Debenture	JJ	122½	3 13 6	—
Gt. Western Rly. 5% Debenture	JJ	136½	3 13 3	—
Gt. Western Rly. 5% Rent Charge	FA	134½	3 14 4	—
Gt. Western Rly. 5% Cons. G'rteed.	MA	132¼xd	3 15 6	—
Gt. Western Rly. 5% Preference	MA	119½xd	4 3 8	—

* Not available to Trustees over par.
† Not available to Trustees over 115.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date ; in the case of other Stocks, as at the latest date.

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Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).